

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JUAN CARLOS MURILLO-  
FIGUEROA,

Defendant.

No. CR12-4022-MWB

**ORDER REGARDING  
MAGISTRATE'S REPORT AND  
RECOMMENDATION  
CONCERNING DEFENDANT'S  
MOTION TO SUPPRESS**

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***I. INTRODUCTION AND BACKGROUND***

On February 22, 2012, an Indictment was returned against defendant Juan Murillo-Figueroa charging him with conspiracy to distribute 50 grams or more of methamphetamine containing 5 grams or more of pure methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 846, and possessing with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). On March 12, 2012, defendant Murillo-Figueroa filed a Motion to Suppress in which he seeks to suppress evidence resulting from a traffic stop of the vehicle he was driving on the ground that the police did not have probable cause to stop his vehicle. The prosecution filed a timely resistance to defendant Murillo-Figueroa's motion.

Defendant Murillo-Figueroa's Motion to Suppress was referred to Chief United States Magistrate Judge Paul A. Zoss, pursuant to 28 U.S.C. § 636(b). Judge Zoss conducted an evidentiary hearing on April 23, 2012. On April 26, 2012, Judge Zoss filed a Report and Recommendation in which he recommends that defendant Murillo-Figueroa's Motion to Suppress be denied. Judge Zoss concluded that the police did not have probable

cause to stop defendant Murillo-Figueroa's vehicle based on an obstructed window because air fresheners hanging from the rear view mirror of the vehicle did not prevent "clear vision" through any of the vehicle's windows. However, Judge Zoss further concluded that, based on the totality of the circumstances, the police had probable cause for suspecting that defendant Murillo-Figueroa was transporting drugs in his vehicle, or at least reasonable suspicion to conduct an investigatory traffic stop. Neither the prosecution nor defendant Murillo-Figueroa have filed objections to Judge Zoss's Report and Recommendation.

## ***II. LEGAL ANALYSIS***

I review the magistrate judge's report and recommendation pursuant to the statutory standards found in 28 U.S.C. § 636(b)(1):

A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

28 U.S.C. § 636(b)(1) (2006); *see* Fed. R. Civ. P. 72(b) (stating identical requirements); N.D. IA. L.R. 7.1 (allowing the referral of dispositive matters to a magistrate judge but not articulating any standards to review the magistrate judge's report and recommendation). While examining these statutory standards, the United States Supreme Court explained:

Any party that desires plenary consideration by the Article III judge of any issue need only ask. Moreover, while the statute does not require the judge to review an issue *de novo* if no objections are filed, it does not preclude further review by the

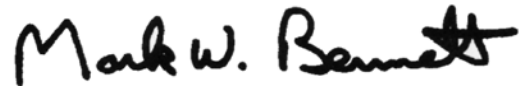
district judge, *sua sponte* or at the request of a party, under a *de novo* or any other standard.

*Thomas v. Arn*, 474 U.S. 140, 154 (1985). Thus, a district court *may* review de novo any issue in a magistrate judge's report and recommendation at any time. *Id.* If a party files an objection to the magistrate judge's report and recommendation, however, the district court *must* "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). In the absence of an objection, the district court is not required "to give any more consideration to the magistrate's report than the court considers appropriate." *Thomas*, 474 U.S. at 150.

In this case, no objections have been filed. As a result, I have reviewed the magistrate judge's report and recommendation under a clearly erroneous standard of review. *See Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (noting when no objections are filed and the time for filing objections has expired, "[the district court judge] would only have to review the findings of the magistrate judge for clear error"); *Taylor v. Farrier*, 910 F.2d 518, 520 (8th Cir. 1990) (noting the advisory committee's note to Fed. R. Civ. P. 72(b) indicates "when no timely objection is filed the court need only satisfy itself that there is no clear error on the face of the record"). After conducting my review, I am not "left with [a] definite and firm conviction that a mistake has been committed," and find no reason to reject or modify the magistrate judge's recommendation. *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). Therefore, I **accept** Judge Zoss's Report and Recommendation and order that defendant Murillo-Figueroa's Motion to Suppress is **denied**.

**IT IS SO ORDERED.**

**DATED** this 1st day of May, 2012.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is written in a cursive style with a prominent "M" and a stylized "B".

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MARK W. BENNETT  
U. S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA